

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MERRILL LYNCH MORTGAGE CAPITAL INC.,

Plaintiff,

- against -

RALPH ESMERIAN, CALYPSO MINES LLC,
ENDYMION, LLC, R. ESMERIAN INC., TANGO
LLC and FOXTROT LLC,

Defendants.

Electronically Filed

Case No. 08-cv-5058 (NRB)(MHD)

NY County Supreme Court
Index No. 600012/2008

**STATEMENT BY MERRILL LYNCH MORTGAGE CAPITAL INC. PURSUANT TO
RULE 9027(e) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE**

This statement is submitted pursuant to Fed. R. Bankr. P. 9027(e)(3) by plaintiff Merrill Lynch Mortgage Capital Inc. (“Merrill Lynch”), in respect to the notice of removal filed on June 2, 2008 by defendants Calypso Mines LLC, Endymion, LLC, Tango LLC and Foxtrot LLC (collectively, the “LLC Defendants”) of the New York State Supreme Court action entitled Merrill Lynch Mortgage Capital Inc. v. Ralph Esmerian, Calypso Mines LLC, Endymion, LLC, R. Esmerian Inc. Tango LLC, Foxtrot LLC, Index No. 600012/2008 (the “State Court Action”). The other defendants in the State Court Action, Ralph Esmerian (“Esmerian”) and R. Esmerian Inc. (“REI”), did not move for removal, but Esmerian and REI have consented to removal.

The LLC Defendants moved for removal pursuant to 28 U.S.C. §§ 1441, 1452 and Fed. R. Bankr. P. 9027 due to the filing of voluntary petitions for relief under chapter 11 of title 11 of the United States Code by the LLC Defendants and certain of their affiliates, including Fred Leighton Holding Inc., in the United States Bankruptcy Court for the Southern District of New York. See In re Fred Leighton Holding, Inc., et al., Lead Case No. 08-11363 (RDD) (Bankr. S.D.N.Y.) (the “Chapter 11 Cases”).

In the seventh cause of action in the State Court Action, Merrill Lynch brought suit against Esmerian pursuant to full recourse unconditional personal guarantee agreements by Esmerian to secure the Special Collection and Acquisition Loans. In the ninth cause of action in the State Court Action, Merrill Lynch brought suit against REI pursuant to a full recourse unconditional guarantee agreement by REI to secure the Special Collection and Acquisition Loans.

Pursuant to Rule 9027(e) of the Federal Rules of Bankruptcy Procedure, Merrill Lynch submits that the seventh cause of action against Esmerian and the ninth cause of action against REI are non-core proceedings to the Chapter 11 Cases. Merrill Lynch hereby respectfully states that it does not consent to entry of a final order or judgment by the United States Bankruptcy Court for the Southern District of New York as to causes of action seven and nine. In addition, Merrill Lynch respectfully submits that causes of action seven and nine should be remanded to the New York State Supreme Court, New York County, Commercial Division, and Merrill Lynch has asked this Court for leave to file such a motion to remand.

Dated: New York, New York
June 12, 2008

CADWALADER, WICKERSHAM & TAFT LLP

By: /s/ Howard R. Hawkins, Jr.
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